INDEPENDENT ENERGY PRODUCERS

March 28, 2003

California Energy Commission
Attn: Docket Office
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Dear Commission:

RE: Independent Energy Producer's Association Comments on the Staff Workshop Re: Renewable Portfolio Standard Proceeding, March 25, 2003
Docket Number 03-RPS-1078

The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the Renewable Portfolio Standard proceeding. Specifically, IEP is providing comments on the California Energy Commission (CEC) Workshop on March 25, 2003 addressing, among other matters, definitions and eligibility.

1. Principle for Determining RPS Compliance.

IEP believes that it is critically important that the CEC/CPUC define what constitutes an energy service provider's (ESP, including the California IOUs) "baseline" for purposes of implementing the RPS, as this helps determine what will be considered "incremental." At a core principle, IEP believe that the definition of "baseline" should reflect the following concepts:

> ***Principle for Determining RSP Compliance***. For purposes of verifying RPS compliance, including determining an ESP's baseline RPS procurement level, only energy (kWhs or renewable energy credits, if applicable) actually sold to an ESP shall be used for determining that ESP's compliance with the RPS.

This should include energy (kWh) or REC's, if applicable, sold to the IOUs from (1) eligible in-state renewable electricity generation technology (Section 383.5),

including eligible QF resources, and (2) "eligible renewable energy resource" (399.12). If energy from an otherwise eligible technology or resource is produced but not sold to an ESP, even if it is produced in that ESP's service territory, then the energy should not be counted by such ESP when determining RPS compliance.

2. Importance of Defining IOU's Baseline for Purposes of RPS Implementation.

The CEC/CPUC must determine each responsive ESP's "baseline" in order to properly measure the extent to which the ESP is complying with the RPS's objectives to increase an ESP's "total procurement of eligible renewable energy resources by at least 1 percent of retail sales per year" [Public Utilities Code Section 399.15(b)(1)] Two standards must be set. First, at what point in time is the baseline "locked-in" and sales to the ESP after that time are measured against the 1 percent annual procurement goal. Second, what energy from an eligible facility or resource should be deemed to be a part of the baseline as of the selected date?

First, regarding the point in time at which the baseline is locked-in, IEP recommends setting the baseline as the ESP's annual consumption of eligible renewable resources in calendar year 2002. Thus, the ESP's baseline would be calculated as the energy sold to the utility from an eligible resource during the 12-month period ending December 31, 2002 (This presumes proper data are available to make the determination). This year represents the last effective annual period to determine the level of renewable procurement by an ESP prior to the effective date of SB 1078.

Second, regarding what energy from an eligible facility or resource should be deemed to be a part of the baseline as of the selected annual period, this must include all eligible renewable energy or RECs, if applicable, "sold" to the utility during the 12-month period. This approach prevents an ESP from entering into a contract for delivery at some future year, but "counting" the contract for purposes of RPS compliance. For example, a procurement contract entered into in 2003 should not count for purposes of RPS compliance in 2003 if the energy is not scheduled for delivery until 2004.

3. Definition of Incremental Power from an Existing Facility/Field Sold to an ESP

Incremental power from an eligible RPS facility is that amount of power that exceeds the average annual production (metered) from the facility for calendar year 2002. Whether a facility or a field is the proper measure for determining incremental output should be determined by the form and nature of the pre-2003 contract used to meet the RPS baseline: i.e., if the output contract was based on a field, then a field should be the measure for determining incremental output, if the output contract was based on a facility, then a facility should be the measure. This provides a measure of symmetry to the determination and should reduce the inevitable litigation that may ensue if symmetry is not present in the methodology for determining incremental output.

Incremental energy sold to an ESP under a new, post 2002 contract should be eligible for Supplemental Energy Payments similar to all other competitors.

4. Criteria for Determining Eligibility of Facilities and/or Resources

Authorizing language for implementation of the California RPS is found in the Public Utilities Code. Specifically, Section 383.5 and Section 399.12 define eligibility of 'in-state renewable electricity generation technology" and "eligible renewable energy resource," respectively. Section 383.5 relates to eligibility for funding from the state's renewable programs administered by the Commission. Section 399.12 relates to eligibility for purposes of RPS implementation.

Some parties at the March 25, 2003 Workshop requested that the Commission consider expanding the definition of eligible facilities and/or resources to facilities and/or resources that are not specifically prescribed in the Public Utilities Code Section 383.5 or 399.12. These parties pointed to the Public Resource Code, Chapter 740 (effectively, AB 2770 – Matthews) as the rational for including gasification technologies as an eligible renewable facility and/or resource.

IEP notes the following in response to this request. First, eligibility for RPS consideration is found in the Public Utilities Code not the Public Resources Code. References to definitions found in the Public Resources Code may not be relevant.

Second, the Commission and the CPUC must be careful when using its authorities to expand the definition of eligible facilities and/or resources. The Commission and the CPUC will continually be asked to expand the definition such that the RPS could lose all meaning, particularly to the public that is funding this program in part through the Public Goods Charge (PGC). The legislature on behalf of the public have adopted a state policy to engender renewable power, which the public knows as "green" power and which they associate as those technologies specifically prescribed in Section 383.5/399.12. Workshop participants, including representatives from the state's Integrated Waste Management Board, requested that the Commission and the CPUC consider including "emerging conversion technologies, including, but not limited to, noncombustion thermal technologies, including gasification and pyrolysis." [Public Resources Code Chapter 740, Section 40117]

The key to being renewable is the feedstock, and if the feedstock for a gasification project is not defined in Section 383.5 and/or 399.12 of the Public Utilities Code, then the Commission should not expand eligibility to include that technology, facility, or resource.

5. Certification of Biomass Fuel Type

Certification of the biomass fuel type is an important criterion for determining eligibility criteria for "new biomass." IEP firmly believes that certification procedures should be designed recognizing that biomass facilities are not necessarily in a position to "police" fuel suppliers. For example, assume that a forest fire has raged and the

federal/state government has allowed fuel suppliers to enter a post-fire zone to conduct salvage/clearage operations. Some of the salvage biomass may be delivered under an existing fuel supply contract to a biomass facility, remotely located from the actual fire. IEP notes the following circumstances that may arise:

- The plant operator will not be in a position to know for certain whether all the wood and wood wastes meet all the requirements in Section 383.5(d)(6), particularly whether all the fuel has been harvested (1) pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Negedly Forest Practices Act of 1973, (2) for the purposes of fire fuel reduction or forest stand improvement, and (3) such that it did not result in the transportation of [timber] species known to harbor insect or disease nests outside zones of infestation … as identified by the Department of Food and Agriculture or the Department of Forestry.

- The plant operator is in a position to certify that the fuel suppliers have certified that the fuel that they have removed form the forest meets the criteria prescribed in Section 383.5(d)(6).

The Commission should establish a certification program that (1) requires the generation facility to certify that the fuel suppliers have certified in writing that the fuel provided to the generation facility is consistent with the relevant statutory provisions, and (2) requires the generation facility to provide documentation (i.e. originals or copies) of fuel supplier certifications. In the absence of this type of mechanism, the liability for false certification falls solely on the generator rather than the responsible entity(s), i.e. the fuel suppliers. In the absence of achieving this end, plant operators may face a liability risk that may be unmanageable, which would undermine the biomass industry's ability to provide power to help meet the state's RPS goals. If the legislature intended such an outcome, it would have simply made biomass power ineligible for purposes of RPS compliance, which they clearly did not do.

6. Eligibility of Out-of-State Power

As IEP suggested at the workshop, eligibility of out-of-state power for purposes of Section 383.5, "In-state renewable electricity generation technology," is merely that the facility's first point of interconnection is in the state of California. How far away the facility resides from the state border and the length of its "gen-tie" is irrelevant as long as the first point of interconnection of the facility is in the state.

IEP is concerned that the Commission and CPUC designed an implementation scheme for the California RPS that is inconsistent with either the federal constitution's Commerce Clause and/or the North American Free Trade Agreement (NAFTA). We urge the Commission to evaluate its disposition of the out-of-state eligibility issue in the context of informed, legal opinion on this matter from CEC and CPUC. It would be unfortunate to spend over a year designing a fatally flawed program due to this matter.

7. RECs Trading Program

IEP requests that the Commission convene a formal workshop to address the role(s) of a Renewable Energy Credit (RECs) trading program in the context of RPS implementation. IEP would support such a program, if it can be shown that RECs will expand the renewable market in California rather than serve as an impediment to such expansion. We have concerns about the implementation of a RECs trading program in an RPS constrained by benchmark pricing and payment caps.

Respectfully submitted

Steven Kelly
Policy Director

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